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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20

Application/Control Number: 08/899,434
Filing Date: 7-24-97
Appellant: Johnson

Gerald Levy
For Appellant

EXAMINER'S ANSWER

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This is in response to Appellant's Brief on appeal filed 11-6-00.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the Brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the Brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims does not contain a rejection of claim 8 under 35 USC 103(a) as obvious over Bodolay et al. in view of Bois and Schroth et al. and does not contain a rejection of claim 12 (which depends from claim 8) under 35 USC 103(a) as obvious over Bodolay et al. in view of Bois and Schroth et al. and further in view of Kühnhold et al. because claim 8 receives priority to 1-22-97 (see Advisory Action, paper 18, "Other" box at bottom of Advisory Action) such that Bois is not available as a reference.

(4) *Status of Amendments After Final*

The Appellant's statement of the status of amendments after final rejection contained in the Brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the Brief is deficient because such does not refer to the specification by pages and lines and does not refer to the drawings.

(6) *Issues*

The Appellant's statement of the issues in the Brief is correct.

(7) Grouping of Claims

Appellant's Brief includes a statement that claims 1-3, 8, and 12 stand or fall together.

(8) Claims Appealed

A substantially correct copy of appealed claims 1-3, 8, and 12 appears on pages 8-14 in the Appendix to Appellant's Brief. Claim 12 is indicated as allowed (p 12) although claim 12 is rejected, and Appellant indicates that claim 12 is rejected on page 2 of the Brief.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal:

5,776,045	Bodolay et al.	7-1998
5,400,568	Kanemitsu et al.	3-1995
4,608,115	Schroth et al.	8-1986
5,659,229	Rajala	9-1997
3,659,767	Martin	5-1972
5,413,656	Kühnhold et al.	5-1995

(10) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

1. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Kanemitsu et al. and Schroth et al.

Claim 1, Bodolay et al. teach an apparatus for dispensing, applying, and sealing individual fastener profiles 57 across a portion of web 14 including **(a)** dispensing means 32 for web 34 of a fastener profile, **(b)** tape cutting assembly 36 for cutting web 34 into profiles 38 which are later heated to become profiles 57, **(c)** belt means 40 for advancing profiles 38/57 into a position across web 14, **(d)** applicator apparatus including sealing mechanism 28 for applying pressure and heat to profiles 57 to seal profiles 57 to web 14, and **(e)** means 22 for sequentially advancing web 14. The combination of web 14 and profiles 57 is then sent to a machine for forming, filling, and closing a reclosable bag (c 3, L 12, to c 7, L 15).

*The difference between Bodolay et al. and claim 1 is that Bodolay et al. do not teach **(a)** that web 34 is, instead of just a fastener profile, a tape having profiles 38 thereon such that assembly 36 cuts the tape into sections and the tape is sealed to web 14, **(b)** that web 14 is thermoplastic, **(c)** that means 40 also includes a vacuum, and **(d)** a means to tension the tape as it is removed from dispensing means 32, including a registration assembly and a drive assembly.*

For **(a)**, Kanemitsu et al. teach that the use of lips 2C and 3C facilitates a proper adjustment of the intermeshing strength of items 2B and 2C as well as other important properties of the assembly (c 1, L 9-

17; c 6, L 10-64; c 9, L 23, to c 13, L 38).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that web 34 is, instead of just a fastener profile, a tape having profiles 38 thereon such that assembly 36 cuts the tape into sections and the tape is sealed to web 14 because Kanemitsu et al. teach that the use of lips under a fastener assembly facilitates a proper adjustment of the intermeshing strength of items of the assembly that interlock as well as other important properties of the assembly.

For **(b)**, be thermoplastic storage bags having a reclosable opening are conventional because such are easily bonded to the closure by heat. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that web 14 is thermoplastic because storage bags having a reclosable opening are conventional because such are easily bonded to the closure by heat where heat is used on Bodolay et al. for bonding. It is noted that the material of web 14 does not provide any structural difference between claim 1 and the applied prior art of record.

For **(c)**, Schroth et al. teach delivering cut pieces of web 16/18 to a bonding station to apply such to web 22. The pieces are delivered on roll conveyor 4 which includes a vacuum to help keep the pieces in place (c 4, L 41, to c 5, L 26; c 10, L 49, to c 12, L 10).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that means 40 also includes a vacuum because Schroth et al. teach using a vacuum with a conveyor to help hold cut pieces of a web in position such that a vacuum included in means 40 will operate to enhance securement of profiles 38/57 to means 40.

For **(d)**, it is conventional provide a means to tension a continuous web material as such is deliberately removed from a supply means in order to prevent the material from sagging during delivery -- causing a detrimental effect on the cutting and delivery process -- where the means to tension controls the position of the web and pulls the web for delivering. It is noted that Bodolay et al. do discuss tensioning web 32 in column 4, lines 40-43. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. a means to tension the tape as it is removed from dispensing means 32, including a registration assembly and a drive assembly, as is conventional in the art of delivering continuous web material from a supply to prevent sagging during delivery -- causing a detrimental effect on the cutting and delivery process.

With respect to the claim limitation that the tape is thermoplastic, it is conventional to use thermoplastic tape when heat and pressure sealing such to a thermoplastic material such that the two thermoplastics will intermingle well as the sealing sight. It would have been obvious to person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., in view of Kanemitsu et al., that the tape is thermoplastic such that the tape and web 14 will intermingle well at the sealing sight.

Claim 8, Bodolay et al. teach sealing the distal ends of profiles 38 after cutting and before application to web 14 such that sealing in this manner would still occur even if profiles 38 are supported on a tape.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Kanemitsu et al. and Schroth et al. as applied to claims 1 and 8 above, and further in view of Rajala.

Claim 2, Bodolay et al., modified, teach, for the means for dispensing, pivotally mounting the tape on unwind reel 32 and pulling from reel 32 by a drive including motors 35 and 37 where motors 35 and 37 control tension (c 4, L 32-37).

The difference between claim 2 and Bodolay et al., modified, is that Bodolay et al., modified, do not teach that reel 32 is powered and a tension arm holding the tape which rises and falls in response to tension in the tape where the unwind speed of reel 32 occurs in response to this rise and fall.

Rajala teaches reel 12 which is powered by motor 14 and tension arm 24 holding web 18 which rises and falls in response to tension in web 18 where the unwind speed of reel 12 occurs in response to this rise and fall (c 7, L 32 to c 8, L 8).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that reel 32 is powered and a tension arm holding the tape which rises and falls in response to tension in the tape where the unwind speed of reel 32 occurs in response to this rise and fall because Rajala teaches that such allows one to accurately control tension in a continuously moving web, where the web of Bodolay et al., modified, is continuously moving, and it is obvious to replace one means of dispensing and tension control (Bodolay et al., reel 32 with motors 3 and 37) with another are recognized means for dispensing and tension control (Rajala).

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Kanemitsu et al. and Schroth et al. as applied to claims 1 and 8 above, and further in view of Martin (3,659,767).

Claim 3, the difference between claim 3 and Bodolay et al., modified, is that Bodolay et al., modified, does not teach that the means for tensioning the tape occurs using dancer rollers and a film synchronizer of one or more vertically adjustable rollers which adjust in response to the tension and the pulling is caused by nip rollers in response to the position of the dancer rollers and the adjustable roller(s).

Martin teaches advancing a web from roll 16 where advancing includes a means for tensioning the

web including a dancer roller 42 and film synchronizer 32 of vertically adjustable roller 70 (or more than one roller) which adjust in response to the tension and the pulling is caused by nip rollers 46, 46, and 50 in response to the position of rollers 42 and 52 in that such responds to roller 52 which responds to tension changed by roller 42 (c 2, L 20, to c 6, L 14).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the tensioning occurs using dancer rollers and a film synchronizer of one or more vertically adjustable rollers which adjust in response to the tension and the pulling is caused by nip rollers in response to the position of the dancer rollers and the adjustable roller(s) because Martin teaches that such allows one to accurately control tension in a continuously moving web, where the web of Bodolay et al., modified, is continuously moving, and it is obvious to replace one means of tension control (Bodolay et al., modified) with another are recognized means for tension control (Martin).

With respect to the claim limitation of using more than one dancer roll, MPEP §2144.04(f) refers to *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) which indicates that the mere duplication of parts (i.e., more than one dancer roll) has no patentable significance unless a new and unexpected result is produced, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, two or more dancer rollers because the duplication of parts requires only ordinary skill in the art and is a matter of routine expedients.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. in view of Kanemitsu et al. and Schroth et al. as applied to claims 1 and 8 above, and further in view of Kühnhold et al. (5,413,656).

Claim 12, the difference between Bodolay et al., modified, and claim 12 is that Bodolay et al., modified, does not teach specifics of assembly 36. Specifically, Bodolay et al., modified, do not teach that assembly 36 includes an air piston mechanism having a shaft that moves in and out by the piston, a blade and clamp on the shaft for cutting and clamping the tape, and a slidable die on the opposite side of the tape having a slot and a spring loaded stripper near the slot where the clamp pushes on the stripper during cutting where the stripper pushes back after cutting.

Kühnhold et al. teach web cutting assembly 10 including a mechanism (box below shaft 15) having shaft 15 that moves in and out by the mechanism, blade 14 and clamp 17/18 on shaft 15 for cutting and clamping web 4, and die 9 on the opposite side of web 4 having a slot and stripper 11/12 near the slot where clamp 17/18 pushes on stripper 11/12 during cutting (c 2, L 66, to c 3, L 35).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that assembly 36 includes a mechanism having a shaft that moves in and out by the mechanism, a blade and a clamp on shaft for cutting and clamping the tape, and a die on the opposite side of the tape having a slot and stripper 11/12 near the slot where the clamp pushes on the stripper during cutting because Kühnhold et al. teach that such is conventional in the art of cutting a continuous web and it is obvious to replace one cutting means (Bodolay et al., modified, specifics undisclosed) with another art recognized cutting means (Kühnhold et al.) used for the same purpose of cutting a continuous web. Although assembly 10 of Kühnhold et al. only perforates, Bodolay et al. teaches complete cutting which therefore dictates that complete cutting will still occur, not perforating, even after modification since one skilled in the art would not destroy the process of Bodolay et al. by perforating.

With respect to the claim limitations of the shaft moving mechanism being an air piston and the die being slidable with a spring loaded stripper, air pistons are conventional in the art as a means for moving a knife to-and-fro for cutting, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the shaft moving mechanism is an air piston because it is obvious to replace one shaft moving mechanism (Bodolay et al., modified) with another art recognized shaft moving mechanism (air piston). Also, slidable dies with a spring loaded stripper are conventional for ensuring that the die pushed back well against the knife and clamp to ensure a clean cut and clean separation of the knife from the web, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al., modified, that the die is slidable with a spring loaded stripper to ensure that the tape is cut cleanly and that the tape is cleanly separated from assembly 36.

(6) Response to Arguments

Appellant argues that tension of the tape is maintained during sealing and that the prior art of record does not teach this limitation (p 6, para beginning "At the onset", lines 10-14). Appellant further indicates that the tension being referenced in the sentence above is claimed (p 6, last para, lines 1-2).

In response, Appellant is arguing a limitation which is not claimed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims, *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The claims do recite tension. Specifically, independent claim 1 (the only independent claim rejected) recites at lines 6-8: "means for delivering tensioned tape and fastener profile from said tape dispensing means". It is noted, however, that this "tensioned tape" refers to the tape BEFORE cutting and not to the

cut pieces of tape AFTER cutting. The "means for delivering tensioned tape" delivers the tape in tension from the dispensing means and ultimately to the tape cutting assembly. The tape cutting assembly then cuts the tensioned tape delivered thereto. There appears to be no significant relationship between the "means for delivering tensioned tape" and the sealing mechanism, argued to apply the tape in tension, because the sealing mechanism applies cut pieces of the tape which have been cut from the tensioned tape, transported to the vacuum belt, and then received by the sealing mechanism. It is further noted that the tensioned tape is cut while the tape is not on the vacuum belt (see page 28) and is then delivered to the vacuum belt for delivery to the sealing mechanism. The limitations of claims 2 and 3 still refer to the tensioning of the tape, not the cut tape.

For the reasons above, it is believed that the rejections should be sustained.

Respectfully submitted,

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llg

November 28, 2000

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